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*Attorneys for Defendant
United HealthCare Services, Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Reyna Dempsey, individually, on behalf of
others similarly situated, and on behalf of the
general public,

Plaintiff,

v.

Government Employees Insurance Company,
United HealthCare Services, Inc., and DOES 1
through 10, inclusive,

Defendants.

Case No. 5:24-cv-00425-EJD-VKD

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT UNITED
HEALTHCARE SERVICES, INC.'S
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Hearing:

Date: October 10, 2024
Time: 9:00 a.m.
Place: Courtroom 4

Hon. Edward J. Davila

I. INTRODUCTION

Defendant United HealthCare Services, Inc. (“United”) respectfully requests that the Court consider the following documents, attached to the Declaration of Lauren M. Blas, in connection with United’s Motion to Dismiss Plaintiff’s First Amended Class Action Complaint:

- **Exhibit 1**, a true and correct copy of the article *Definitions of Infertility and Recurrent Pregnancy Loss: A Committee Opinion*, 99 Fertility and Sterility 1 (2013), available at [https://www.fertstert.org/article/S0015-0282\(12\)02242-X/fulltext](https://www.fertstert.org/article/S0015-0282(12)02242-X/fulltext).
- **Exhibit 2**, a true and correct copy of the article *Definitions of Infertility and Recurrent Pregnancy Loss: A Committee Opinion*, 113 Fertility and Sterility 3 (2020), available at [https://www.fertstert.org/article/S0015-0282\(19\)32594-4/fulltext](https://www.fertstert.org/article/S0015-0282(19)32594-4/fulltext).

These documents—articles authored by the Practice Committee of the American Society for Reproductive Medicine and published in the journal *Fertility and Sterility*—may be properly considered by the Court because they are subject to judicial notice under Federal Rule of Evidence 201.

II. ARGUMENT

In evaluating a Rule 12(b)(6) motion to dismiss, the court considers “the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice.” *In re Google Assistant Privacy Litig.*, 546 F. Supp. 3d 945, 955 (N.D. Cal. 2021) (citation omitted). Under Federal Rule of Evidence 201, a court may judicially notice a fact “that is not subject to reasonable dispute” because it is “generally known” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201 (b)(1)-(2). The court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

Here, Exhibits 1 and 2 are judicially noticeable because they are “not subject to reasonable dispute.” Fed. R. Evid. 201(b). Both documents are “publicly available from a source whose accuracy cannot reasonably be questioned”—namely, the online website of the scientific journal *Fertility and Sterility*—and the “contents can be accurately determined.” *In re Meta Pixel Tax Filing Cases*, --- F. Supp. 3d ----, 2024 WL 1251350, at *3 (N.D. Cal. Mar. 25, 2024). That is sufficient to permit the

1 Court to judicially notice “the existence and contents” of the articles. *Id.*; *Abdin v. CBS Broad. Inc.*,
 2 971 F.3d 57, 60 n.2 (2d Cir. 2020) (taking judicial notice of scientific publications “for the publication
 3 of such information and relevant discussion in the scientific community”); *In re Nuvelo, Inc. Sec. Litig.*,
 4 668 F. Supp. 2d 1217, 1219-20 (N.D. Cal. 2009) (taking judicial notice of an article from the journal
 5 *Pharmaceutical Statistics*). In particular, the Court should judicially notice the fact that the Practice
 6 Committee of the American Society for Reproductive Medicine described “infertility” in Exhibits 1
 7 and 2 as:

- 8 • “[A] disease defined by the failure to achieve a successful pregnancy after 12 months
 9 or more of appropriate, timed unprotected intercourse or therapeutic donor
 10 insemination” (Exhibit 1), and
- 11 • “[A] disease historically defined by the failure to achieve a successful pregnancy after
 12 12 months or more of regular, unprotected sexual intercourse or due to an impairment
 13 of a person’s capacity to reproduce either as an individual or with her/his partner”
 14 (Exhibit 2).

15 The existence of these definitions “can be accurately and readily determined from sources
 16 whose accuracy cannot reasonably be questioned,” making judicial notice appropriate. Fed. R. Evid.
 17 201(b)(2); *see Vizcarra v. Michaels Stores, Inc.*, --- F. Supp. 3d ---, 2024 WL 64747, at *5 n.2 (N.D.
 18 Cal. Jan. 5, 2024) (“The Court takes judicial notice of the existence and contents of the webpages
 19 Michaels has submitted which show certain Michaels private brand products for sale on Amazon.com
 20 and Walmart.com.”); *Rieckborn v. Jefferies LLC*, 81 F. Supp. 3d 902, 913 (N.D. Cal. 2015) (taking
 21 judicial notice of documents for “the existence of their contents, not the truth of their contents”).

22 III. CONCLUSION

23 For the foregoing reasons, the Court should take judicial notice of Exhibits 1 and 2, including
 24 the definitions of “infertility” contained therein.

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1 DATED: June 27, 2024

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

3
4 By: /s/ Heather L. Richardson
Heather L. Richardson

5 Attorneys for Defendant
6 United HealthCare Services, Inc.